

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1681 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

SHIVUBHAI KESHARISINH VAGHELA

Versus

DEVISANG ALUJI VAGHELA

Appearance:

MR BC DAVE for Petitioners
MR BN RAVAL for Respondent No. 1
MR PK JANI for Respondent No. 2 & 3
MR. MUKESH PATEL, ASST. GOVERNMENT PLEADER for
Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 13/02/98

ORAL JUDGEMENT

Rule. Mr. B.N. Raval waives service of rule for respondent No. 1. Mr. P.K. Jani, waives service of rule for respondents Nos. 2 and 3. Mr. Mukesh Patel, AGP, waives service of rule for respondent No. 4.

Heard learned counsel for the parties. The petitioner, third party, applies to the trial court to be joined as party defendant in the suit filed by the respondent No. 1. The said application has been rejected by the impugned order dated 18.10.1997. The plaintiff-respondent No. 1 filed suit being Regular Civil Suit No. 39 of 1997 in the court of Joint Civil Judge (S.D.), Ahmedabad Rural at Mirzapur against respondent Nos. 2 to 4 i.e. Sanand Nagar Palika, Chief Officer of the said Nagarpalika and the State of Gujarat inter alia praying that the land situated in the North of City Survey No. 3015 belongs to the plaintiff and declare that the notice dated 10.1.1997 issued by the Nagarpalika is illegal and void.

The petitioner third party filed an application Exh. 21 inter alia praying that the notice issued to the plaintiff dated 10.1.1997 by the Nagarpalika was on the basis of the application made by him and the fact that the house is situated in the suit land and he is a proper party. This application was rejected solely on the ground that no relief has been claimed as against the third party. The only relief claimed is against the defendant No. 2 i.e. the Nagarpalika.

It is contended by the learned counsel that no relief is asked for by the plaintiff against the third party is no ground for rejecting the application. He relied on the decision in the case of SHRIRANG DATTATRAYA GHARPURA VS. SHANTABEN CHHOTALAL VARMA AND ANOTHER 1986 G.L.H. (U.J.) 37. On the other hand Mr. Raval submits that the presence of third party petitioner is not necessary for the proper adjudication of the issue involved in the suit. He further submits that the presence of the third party will complicate the issue.

It is not in dispute that the petitioner third party submitted an application dated 30.9.1996 to the Nagarpalika informing that the plaintiff has made encroachments on the Government land and thereby he has created hardship to the people residing in the said locality. On the basis of the said application notice dated 10.1.1997 which is sought to be declared illegal by the plaintiff was issued. Merely the plaintiff has chosen not to ask any relief against a third party, his right of hearing in the matter cannot be denied. His presence in the suit will facilitate the court in proper adjudication of the controversy. The controversy in the present Civil Revision Application is squarely covered by the decision of this court in SHRIRANG's case (Supra) and this revision application is allowed and the order of the Second Joint Civil Judge, Ahmedabad Rural dated

18.10.1997 passed in R.C.S. No. 39 of 1997 below Exh. 21 is quashed and set aside. The prayer under Exh. 21 is granted. Rule is made absolute. Mr. Raval submits that the operation of this order may be stayed for some time with a view to enable his client to approach Supreme Court or to avail of appropriate remedy. In the facts and circumstances of the case the prayer is declined.

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